

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* ALVAREZ, Minor.

UNPUBLISHED  
December 18, 2018

No. 343646  
Kent Circuit Court  
Family Division  
LC No. 16-053502-NA

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Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i), (g), and (i). We affirm.

I. BACKGROUND

Respondent has a long history of substance abuse. Indeed, before this case, respondent had two of his children removed from his care due to his substance-abuse issues. Respondent was provided substance-abuse counseling and other services following this removal, and eventually the children were returned to him. The reunion was short-lived, however, and the children were again removed from respondent's care after his home was raided and law enforcement seized heroin, cocaine, marijuana, and drug-sale supplies. Ultimately, respondent's parental rights to these children were terminated in 2015.

In late 2016, respondent's third child—the child at issue in this case—was born. At her birth, the child tested positive for cocaine and marijuana. Thus, the child was removed from respondent's and the mother's care. The mother's parental rights to the child were eventually terminated and she is not a party to this appeal. Because respondent was on probation for maintaining a drug house at the time of the child's removal, petitioner identified substance abuse and criminality as two barriers for reunification. Petitioner referred respondent for substance-abuse counseling and to Narcotics Anonymous meetings. Respondent was also subject to drug screening and set up with a recovery coach. Petitioner provided respondent with parenting classes and housing assistance.

Respondent completed all of the parenting classes and, by the end of this case, there was no concern that respondent knew how to parent the child. Yet, respondent still struggled with illegal substances. Although it does appear that respondent maintained some periods of sobriety during the pendency of this case, respondent failed to complete approximately half of the

required drug screens. Moreover, some of respondent's screenings were positive for cocaine use. When caseworkers questioned respondent about the positive screenings, respondent gave various explanations for the result: respondent claimed that a dentist had prescribed him cocaine, that cocaine got into his pores when he was handed some money that was recently in contact with cocaine, and that he "had sexual relations with someone who had recently done cocaine." The forensic lab that conducted the drug testing for petitioner indicated that none of these explanations could have produced the positive result.

Caseworkers also discovered evidence that respondent had been in contact with the child's mother, whom the trial court cautioned respondent from seeing given her own sobriety issues. Moreover, caseworkers found a text on respondent's phone indicating that he was engaged in the sale of crack cocaine. Caseworkers' suspicions about respondent's drug sales were confirmed when police arrested respondent for possessing marijuana. Respondent initially provided several excuses for the illegal possession, including that he was holding the marijuana for a friend and that he had loaned his car to someone who left the marijuana inside it. Eventually, however, respondent admitted to police that he was attempting to sell the substance. Respondent was convicted of possession and incarcerated for a short time.

Petitioner then petitioned the trial court to terminate respondent's parental rights. Despite this petition, caseworkers still attempted to provide respondent with services, but respondent refused to sign a release of information so that caseworkers could speak with his attorneys and probation officer about his criminal status. Respondent was released a week before the termination trial but did not reengage his substance-abuse services. Indeed, respondent refused to submit to drug screening the day before the termination trial.

The trial court concluded that petitioner had made reasonable efforts to reunify respondent and his child, but that respondent had failed to benefit from these services. The trial court noted respondent's continued substance-abuse issues and criminality and concluded that MCL 712A.19b(3)(c)(i), (g), and (i) supported termination of his parental rights. The trial court found that the child, who had been in foster care since her birth, was in need of permanency, and concluded that termination was in the child's best interests.

This appeal followed.

## II. ANALYSIS

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). Once a ground for termination is established, the trial court may order termination of parental rights if it finds that termination is in the child's best interest. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). Absent exceptions not present here, petitioner is required to make reasonable efforts to reunify families and to rectify the conditions that led to the initial removal. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000).

"We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision

regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000); see also MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296–297; 690 NW2d 505 (2004). Generally, we also review the trial court's findings regarding reasonable efforts for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). When, however, the respondent fails to object to the adequacy of the services provided, as in this case, our review is limited to plain error affecting the respondent's substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

*Reasonable Efforts.* Respondent first argues that termination of his parental rights was premature because petitioner did not provide him with adequate reunification services. "[W]hen a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *Fried*, 266 Mich App at 542. Petitioner has the "responsibility to expend reasonable efforts to provide services to secure reunification," *Frey*, 297 Mich App at 248, and an absence of reasonable efforts to provide services aimed at reunification may render termination premature, *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Here, the record shows that petitioner reasonably engaged respondent in reunification services. To address respondent's substance-abuse issue, petitioner referred respondent for random drug screening and substance-abuse counseling, which included Narcotics Anonymous and recovery coaching. To address respondent's parenting skills, petitioner referred respondent to parenting classes and provided him with parenting packets during his incarceration. Regarding housing, respondent was referred for housing resources and was also searching for independent housing with the assistance of his recovery coach. Respondent argues that petitioner did not receive adequate feedback from respondent's service providers, but respondent does not challenge that he received the services and has not provided any evidence that the services were inadequate. Accordingly, the trial court's conclusion that petitioner made reasonable efforts to reunify respondent and the child was not erroneous.

*Statutory Grounds.* Respondent next argues that the trial court erred by finding statutory grounds to support termination of his parental rights. The trial court terminated father's parental rights to the children under MCL 712A.19b(3)(c)(i), (g), and (i). In pertinent part, those sections provide that termination of a respondent's parental rights may be appropriate in any of the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.<sup>[1]</sup>

\* \* \*

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.

The trial court need only find that one statutory ground has been proven to terminate parental rights. *In re Trejo*, 462 Mich at 360.

Two of respondent's children were previously removed from his care because respondent could not maintain sobriety. Indeed, the conditions that led to the removal of the child at issue in this appeal were respondent's substance abuse and related criminality. To rectify these conditions, respondent was provided with substantial substance-abuse services. Indeed, the record shows that respondent was previously provided with substance-abuse services before the removal of his other two children. Yet, respondent failed to benefit from these services. Respondent missed approximately half of his scheduled drug screens and tested positive for cocaine on a handful of occasions. When caseworkers questioned respondent about these positive results, respondent gave various excuses—including touching money that had traces of cocaine on it to having sex with someone who was under the influence of cocaine. These explanations could not have caused respondent's positive test results and, even if they had, they reveal a lifestyle that would be dangerous for a young child. Ultimately, respondent was arrested and imprisoned for selling a controlled substance. He was released a week before trial, but failed to reengage his substance-abuse services.

Thus, despite being offered numerous services—both in this case and the previous cases—respondent was unable to maintain his sobriety or abstain from criminality. Because respondent has failed to address the conditions that have led to the removal of all three of his children, the trial court did not err by concluding that MCL 712A.19b(3)(c)(i) and (i) supported termination of respondent's parental rights. Moreover, respondent's drug use and criminality indicate that the child would be endangered if returned to respondent's care, and respondent's failure to rectify these conditions despite numerous opportunities to do so indicates that there is no reasonable expectation that respondent will be able to provide a suitable environment for the child within any reasonable time. Thus, MCL 712A.19b(3)(g) also supported termination of

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<sup>1</sup> MCL 712A.19b(3)(g) was recently amended, effective June 12, 2018 to require the court to inquire into the parent's financial ability to provide proper care and custody. See 2018 PA 58. Because the trial court's order was entered before this amendment took effect, however, the amendment is not applicable to this case.

respondent's parental rights. Accordingly, the trial court did not err by concluding that statutory grounds existed to terminate respondent's parental rights.

*Best Interests.* Finally, respondent argues that the trial court erred by concluding that termination of his parental rights was in the child's best interests. "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Despite receiving numerous services over three removals, respondent was unable to maintain sobriety. Moreover, respondent continued to engage in criminal behavior and his responses to caseworker inquiries indicated that he remained active in the drug scene. Respondent's drug use and criminality rendered his home an unsafe environment for his child—one that he was not likely to improve within any reasonable time. The trial court did not err by concluding that termination was in the child's best interests.

Affirmed.

/s/ Brock A. Swartzle  
/s/ David H. Sawyer  
/s/ Amy Ronayne Krause